

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 058392/2026

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
14 May 2026	
DATE	SIGNATURE

In the matter between:

JR 209 INVESTMENTS (PTY) LTD

Applicant

and

HOMELESS PEOPLE HOUSING COOPERATIVE LTD
REG NO: 2014/013419/24

First Respondent

SAMUEL MANDHLA SONGO

Second Respondent

KOLOBE VIRGINIA KGOMO

Third Respondent

SELO SHARON LEHONG

Fourth Respondent

MADUMETSA THOMAS MOJELA

Fifth Respondent

KEDIBONE JOHANNES SIBANYONI

Sixth Respondent

ABRAM ABBEY KHWINANA SELOLO

Seventh Respondent

UNLAWFUL INVADERS OF PORTIONS 8, 10 AND 38

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 14 May 2026.

JUDGMENT

POTTERILL J

Introduction

[1] In a nutshell, JR 209 Investments (Pty) Ltd [JR 209] on an urgent basis sought against the First Respondent, Homeless People Housing Cooperative Ltd [HPH] a contempt of court order. JR 209 sought against the Second to Seventh Respondents, the Directors of HPH [the Directors], an order seeking directory relief ordering the directors to restrain from taking any steps, until legally entitled to do so, to demarcate portions of certain properties, sell any portions of land, demarcated or not, to third parties, and cause any dwellings, shacks, or similar structures to be constructed or erected on the subject properties. The eighth respondent is the unlawful invaders of Portions 8,10 and 38 of the of the farm Witkoppies 393, Ekurhuleni [the property]. No relief is sought against them.

The common cause facts as background

[2] HPH is the owner of Portions 8,10 ad 38 of the Farm Witkoppies 393 JR, Ekurhuleni Local Municipality collectively referred to as "the Property." JR 209 is the owner of the adjacent property. It is not denied that HPH is attempting to provide housing to people on its property. Only the amount the people are paying for the land and which "they hope to achieve" is denied. It is also not denied that these people are indigent people, just that JR 209 did not address the humanitarian and constitutional issues that their ingenuis can engage, without specifying what these issues are.

[3] It is also not denied that this conduct of HPH has a protracted history that has resulted in four court orders granted against HPH. The essence of the orders seeks to

prevent the unlawful occupation of, and establishment of informal settlements on the property. It is common cause that the property is zoned as agricultural land and not residential land. The Subdivision of Agricultural Land Act 70 of 1970 as well as the consent use and the zoning of the property allows for only agriculture use of the land. A township has not been proclaimed and there is no permission for a township establishment. I interlude in noting that, HPH attached to its answering affidavit township development applications and documents totaling 785 pages. Counsel conceded that these documents had no relevance to the orders sought as they related to applications before 2018, long before the orders were granted against HPH and not in compliance with any orders. I will return to this wasteful exercise later in the judgment.

[4] The content of the orders is common cause, but as much of HPH's argument revolved around the nature of the orders and against whom the orders were granted I find it necessary to summarize and reproduce the relevant content thereof herein.

The Tuchten order

[5] The Tuchten order was granted on 19 April 2019. JR 209 was the first applicant, HPH the first respondent and the unlawful occupiers the third respondent. The relevant orders read as follows:

"3. The following order is granted as an interim order to operate with immediate effect, pending the final determination of the relief sought in part [B] of this application:

3.1 The Third Respondents are interdicted and restrained from invading, taking occupation, demarcating and/or performing any unlawful building/construction on

Portion 10 of the Farm Witkoppies 393, Pretoria, Ekurhuleni;

Portion 8 of the Farm Witkoppies 393, Pretoria, Ekurhuleni;

Portion 38 of the Farm Witkoppies 393, Pretoria, Ekurhuleni

("the invaded properties");

- 3.2 The Third Respondents are interdicted and restrained from conducting any unlawful building and/or construction on the invaded properties and particularly dwellings/shacks and/or from delivering or causing to be delivered any building materials to the invaded properties;
- 3.3 The First Respondent is ordered and directed to take any and all steps necessary to enforce compliance with this order on and in respect of the invaded properties, to desist from any further unlawful use of the invaded properties or granting consent to do so, to prevent any further invasion of the invaded properties by the third respondents, unlawful use, unlawful conduct on or in respect of, unlawful occupation, unlawful erection of dwellings and particularly shacks at the invaded properties."

The Millar order

- [6] The Millar order was granted on 26 April 2019 with JR 209 being the first applicant and HPH the first respondent.
- "3. The first respondent is declared to be in contempt of the court order granted by Tuchten [J] on 19 April 2019 under the above case number.
4. A fine is imposed on the first respondent in the amount of R100,00,00 [ONE HUNDRED THOUSAND RAND] and the payment thereof is suspended:
 - 4.1 on condition that the first respondent forthwith complies with the aforesaid order and continues to do so in future;
 - 4.2 until the establishment of townships on the subject properties and/or the first respondent ceases to be the owner of any one of the properties, in which case that property is released from the operation of this order but that the remainder of the order will be continue to the effective.
5. The sheriff is hereby instructed to forthwith attend on the subject properties and:
 - 5.1 establish the precise number of dwellings and structures erected on the subject properties since 19 April 2019 and allocate a number to each

such constructed structure/dwelling;

- 5.2 demolish each structure/dwelling erected since 19 April 2019 on the subject properties;
- 5.3 report to each of the parties and the court on the amount of structures/dwellings that were constructed on the subject properties as at 19 April 2019 and confirm the precise details of the occupants, which must include the full names and identity numbers of such individuals, if any, of such dwellings;
- 5.4 to the extent that the structures/dwellings constructed on the subject properties prior to 19 April 2019 are unoccupied, the sheriff is instructed to demolish those structures/dwellings and the respondents reserve their rights in relation to each decision so taken;
- 5.5 each party undertakes to co-operate with the sheriff in each and every respect required for the enforcement of this order.

The Fourie order

The Fourie order was granted on 7 May 2020 and granted a provisional liquidation order against HPH. The counterapplication for contempt was postponed sine die with the costs reserved.

The Kollapen order

[7] The Kollapen order was granted by agreement on 17 July 2020. The provisional liquidation order granted against HPH on 7 May 2020 was revoked with HPH to pay JR 209's legal costs in respect of the previous legal proceedings between JR209 and HPH in the total amount R490,930.56, within 48 hours from the granting of this order, through direct deposit thereof into the trust account of the applicants' attorneys of record."

- "4. The respondent shall ensure that it and its members comply with all the orders granted in all the previous legal proceedings between the applicants and respondent and in the particular that;

- 4.1 until such time as legally entitled to do so no more than 52 persons shall at any time be present, and no further dwellings, shacks, or similar structures, other than currently on the properties owned and controlled by the respondent as on the date of this order, shall be constructed and/or erected thereon;
- 4.2 no person shall illegally and unlawfully occupy the properties owned and controlled by the respondent;
- 4.3 no structures of any nature shall illegally and unlawfully be erected on the properties owned and controlled by the respondent; and
- 4.4 there shall be strict compliance with any applicable legislation relating to the properties owned and controlled by the respondent, specifically with regard to the occupation thereof."

[8] The Fourie and Millar orders were successfully petitioned to the Supreme Court of Appeal but were not further prosecuted.

Points in limine raised and arguments not proceeded with.

Urgency

[9] It must be highlighted that this matter was not heard on the date set down for the urgent application because the pages exceeded the limit of 500 pages and the answering affidavit was delivered the night preceding the hearing leaving JR 209 no time to file a replying affidavit. The bulk of the papers were the annexures to the answering affidavit, referred to above which, as conceded, did not prove the lawfulness of people settling on the property or were executed as compliance after the previous orders were granted.

[10] The DJP referred the matter to a special court on a specific date. Yet, the urgency was attacked in the papers and for many pages in the Heads of Arguments. This argument was, however, correctly abandoned at the hearing excepting for the costs thereof. However, HPH cannot escape the only conclusion that the answering affidavit was bulked up with irrelevant documents so as not to be heard on the allocated date.

Non-joinder of the necessary parties

[11] Much was made of the Municipality and “possible other relevant competent public bodies” not being joined as parties. The outcome sought in this matter is a contempt of court order against HPH and directory relief against HPH’s directors. What substantive interest in the outcome of this matter the Municipality would have is inexplicable and simply bad in law. Who the other public bodies may be is not set out and is an example of the non-evidential and misdirected nature of the answer to JR 209’s application. This argument was persisted with in HPH’s Heads of Argument, but was abandoned at the hearing.

Failure to comply with the PIE Act

[12] It was raised that the application was effectively an eviction order and there was non-compliance with the PIE Act. The order being sought is clearly prospective, as were the previous orders granted and nobody is to be evicted. This point was also abandoned.

Defective commissioning of the founding affidavit

[13] Of all the spurious points raised, this was the most simulated. The argument went that the stamp of the Commissioner of Oaths on the founding affidavit was not placed on the document at the same time as the confirmatory affidavit. Notice was given of a forensic expert report. The report concluded as follows: “... and that no handwriting characteristics were identified in the questioned signature indicating signature forgery in the ordinary sense. Notwithstanding the aforesaid, the expert expresses the opinion that, on the probabilities, the questioned signature and the comparison signature were written at two separate instances and do not share a common signature pool.”

[14] Attached to the replying affidavit, in answer to this point raised in the answering affidavit, the Commissioner of Oaths made an affidavit setting out that she commissioned the affidavit in terms of the Act. But, in any event, the two stamps can practically not be applied at the same time, neither can the two signatures be appended at the same time.

[15] HPH then, 1 court day before the hearing, filed a notice in terms of Rule 35(14) seeking the original stamps and affidavits. This application could not and would not be

entertained and was also not proceeded with. This served notice is a prime example of the conduct with which HPH approached this matter by abusing the Rules of Court. I find it necessary to remark that many of the points raised by HPH reflect little credit on the legal practitioners responsible for their preparation.

[16] I do not address all the points raised, but that does not imply that I did not consider all the points.

The application against HPH for contempt

[17] JR 209 set out that despite the Court orders interdicting and prohibiting HPH from unlawfully erecting structures or allowing structures to be erected on the property and from permitting its property to be unlawfully invaded there is a flagrant disregard of the orders.

[18] In the last week of February 2026 Mr. Boshoff, the owner of Formel Security, providing security services to JR209 and other properties by means of a message on a WhatsApp group informed JR 209 that there was a large group of people gathering on portion 10 of the Property. Mr. Boshoff sent two security guards to ascertain what was happening on the Property. The two security guards approached the Property from different areas and spoke to different people on the Property. They were informed that one could buy a Property from HPH for R10 000. The statements of the security guards are attached to the papers but are not under oath.

[19] Mr. Ben van Wyk on 22 February 2026 from a hilltop inspected the Property. He saw individuals demarcating land and setting out portions with white and red tape. There was a large group of people as well as a white tent on portion 10 of the Property. Hlases survey was the company busy with demarcation. He confirms this in an affidavit and attached photographs depicting demarcation, the vehicle of the survey company, the tent and a board with HPH reflected thereon on the Property.

[20] On 28 February 2026 there was a large gathering of people on the Property. The station commander of Olifantsfontein, Lieutenant Colonel Magazi confirmed that he was present at the meeting. The spokesman at the meeting informed the attendees that the land was being sold.

[21] On the same day, a farmer, Mr. Dolf van der Westhuizen from a hilltop observed portion 10. He took photographs of what he saw. He observed 500 to 600 people

standing in a queue, a large tent and 200 cars parked in a dirt road. He saw people demarcating land with poles and plastic tape. He drove to the other side of the portion and saw an individual plotting land with what seemed to be a GPS device while instructing another person to put a pole on the spot he indicated. The photographs are before Court.

[22] The only engagement with these facts set up by HPH is “the presence of persons, tents, motor vehicles, or surveying activity does not, without more, establish the sale of land, unlawful invasion or contempt of court.” It was argued that JR 209 was relying on assumptions and hearsay. HPH never denied any of the facts put up by JR 209 under oath, neither was it prepared to, under oath, explain what the tents, people and surveying activity in fact represented. It remarks on a letter written by the attorney for HPH attached to the affidavit of JR209 wherein there is one sentence that expresses that there is no court order preventing HPH from holding its monthly meeting. This is not repeated under oath and does not positively state that the vehicles, people and surveying activity had another purpose, that of a monthly meeting. One can confidently assume that explaining surveying activity at a monthly meeting, under oath, would be a stretch too far. There are simply no facts set up by HPH.

[23] With no contrary facts set up under oath by HPH there is no dispute of fact, let alone a real, genuine bona fide dispute of fact. A real, genuine and bona fide dispute of fact exists where the “party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact set to be disputed.” And “When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true and correct, but instead of doing so, rest his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied.”¹

[24] Even with the Court disregarding the evidence of the two security guards and the videos, the evidence is overwhelming that surveying and demarcation was taking place for plots to be sold. On the facts put up by JR 209 there was demarcation of parcels of land and selling of these parcels of land to members of the eighth

¹ *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA) at par [13]

respondent in February 2026. Putting up a tent, demarcating plots of land, long queues of people and many vehicles on the property under the control of HPH is not adhering to this order or the previous orders. It is not evidence of HPH having no control over unidentified people, but HPH inviting these people.

The next question is whether this conduct of HPH is in contempt of a court order or orders.

Are the orders defective for being broad and indeterminate?

[25] On behalf of HPH the complaint was that the obligations imposed on it was “to ensure compliance, to “prevent unlawful occupation” and to “take the necessary steps”. It was argued that these formulations were inherently open-ended, ambiguous and undefined and therefore could not establish a basis for contempt of court. HPH could not be found to be in contempt of Court where it had no control over unidentified people. Reliance was placed on *Eke v Parsons*² that the order must be sufficiently certain to be enforceable.

[26] Millar J had found HPH to be in contempt of the Tuchten order. I must accept that the orders by Tuchten were sufficiently certain for a contempt order to have been granted. JR 209 is also in this application seeking a contempt order against HPH for non-compliance with the Tuchten order. I too find that the order of Tuchten against HPH is sufficiently certain to establish a basis for contempt of court. HPH was ordered to desist from any further unlawful use of the invaded properties or granting consent for further unlawful use, invasion and unlawful erection of any kind of dwelling on the properties. HPH has no lawful right to demarcate and sell plots on portion 10. It in February was acting in direct contravention of the unambiguous order of Tuchten.

[27] JR 209 also seeks this Court to find that HPH is in contempt of the Millar order. HPH was declared to be in contempt of court of the Tuchten order and a fine of R100 000 was imposed but suspended on condition HPH “forthwith complies with the aforesaid order and continues to do so in future.” This order was made operative until the establishment of townships on the subject properties and/or if HPH ceases to be the owner of any one of the properties. This order is not vague; HPH must comply with the order of Tuchten and must continue to do so in the future. There is no

² *Eke v Parsons* 2016 (3) SA 37 (CC) at par [29]

establishment of a township on the property and HPH demarcating plots is unlawful. This is contrary to the Tuchten order.

[28] By agreement between the parties the Kollapen order was made an order of Court. The Kollapen order could not be more detailed. No more than 52 persons were allowed on the property. No further dwellings or shacks or similar structures may be erected or constructed on the property controlled by HPH. HPH is ordered to ensure that its members comply with the orders granted. Only when HPH is legally entitled to do so may it allow more than 52 people on the property. No structures or people are to illegally and unlawfully occupy the properties owned by HPH.

[29] The orders are not broad and indeterminate, but sufficiently clear to be enforced.

Did JR209 comply with the requirements for a contempt of court order

[30] An applicant for contempt must establish that an order was granted against the alleged contemnor and that the alleged contemnor was served with the order or had knowledge thereof but failed to comply with the order. "Once these elements are established, wilfulness and mala fides are presumed and the respondent bears an evidentiary burden to establish a reasonable doubt. Should the respondent fail to discharge this burden, contempt will have been established."³

[31] JR 209 has established all three of the requirements. HPH has not put any evidence before this Court to discharge its evidential burden in relation to wilfulness and mala fides. The argument on behalf of HPH that JR209 must prove beyond reasonable doubt the wilfulness and mala fides is simply bad in law. In *Fakie NO v CCII Systems (Pty) Ltd*⁴ the Court found that "once the applicant has proved the order, service or notice, and non-compliance, the respondent bears an evidential burden in relation to wilfulness and *mala fides*: should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance was wilful and *mala*

³ *Secretary, Judicial Commission of Inquiry into allegations of State Capture v Zuma and Others* 2021 (5) SA 327 (CC) par [37]

⁴ *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) par [42]

fide, contempt will have been established beyond reasonable doubt.” JR 209 has proved all the requirements of the contempt of court.

The relief sought against the directors

[32] There is no answer to the relief sought against the directors. The relief sought against the directors is a directive to enforce the court orders in civil contempt proceedings.⁵ The relief sought against the directors is compliance with the court orders, functioning as the board of HPH. This relief too must be granted.

[33] The disobedience of these Court orders constituted a violation of the Constitution. HPH is not upholding the rule of law and ignoring the authority of the Judiciary. Contempt of court proceedings exist to protect the rule of law and the authority of the Judiciary. In granting contempt of court orders the Court is acting “as guardians of the Constitution, asserting their authority in the public interest.”⁶ The suspension of the fine of R100 000 must be uplifted and the fine must be paid. A further fine is necessary for HPH to experience a financial loss for the first time.

Costs

[34] I see no reason why the general rule that the costs should follow the result would not be applicable. JR 209 is seeking the costs on a punitive scale. This was based on the abuse of the process to delay the hearing of the urgent matter by attaching the irrelevant attachments of over 700 pages to the answering affidavit. This conduct is to be frowned upon. The many points raised in the answering affidavit and persisted with in the heads but then abandoned at the hearing was ill considered and deliberate. This resulted in the matter being set down for two days due to all the issues raised, while it finished long before lunch of the first day. This is unbecoming behaviour of a litigant and constitutes an abuse of the litigation process. The non-evidentiary attack of JR 209’s case and the points raised, plainly bad in law, is frowned upon can be categorised as “cavalier litigation”⁷ justifying a punitive award of costs.

Order

⁵ *Matjhabeng Local Municipality v Eskom Holdings Ltd and Others* 2018 (1) SA 1 (CC) par [54]

⁶ *Secretary, Judicial Commission of Inquiry into allegations of State Capture v Zuma and Others* *supra* par [27]

⁷ *Desert Fruit v Smith* (20947/2018) [2023] ZAWCHC 338 (13 December 2023)

[35] The following order is made:

1. The second to seventh respondents are interdicted and restrained from taking any steps to, until such time as the first respondent is legally entitled to do so:
 - 1.1. demarcate portions of the subject properties,
 - 1.2. sell any portions of land, demarcated or not, to third parties, and
 - 1.3. cause any dwellings, shacks, or similar structures to be constructed or erected on the subject properties.
2. The first respondent is found to be in contempt of Court of the Court Orders granted by:
 - 2.1. Tuchten J on 19 April 2019, under case number 24505/2019,
 - 2.2. Millar AJ on 26 April 2019, under case number 24505/2019, and
 - 2.3. Kollapen J on 17 July 2020, under case number 21712/2020.
3. The suspension of the fine imposed by Millar AJ against the first respondent, in the amount of R100,000.00, as a result of its (previous) contempt of court, be uplifted.
4. A further fine of R500,000.00 be imposed on the first respondent as a result of its persistent contempt of Court.
5. The costs of this application be paid by the respondents jointly and severally, on a scale as between attorney and client, the one paying the other to be absolved. The costs to include the costs of two counsel, one on scale C and one on scale B.


S. POTTERILL
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

CASE NO: 058392/2026

HEARD ON: 28 April 2026

FOR THE APPLICANT: ADV. P.W.T. LOURENS

ADV. R. VAN SCHALKWYK

INSTRUCTED BY: Strydom Rabie Incorporated

FOR THE 1ST AND 2ND RESPONDENTS: ADV. S. AUCAMP

ADV. J.H. MALAN

ADV. S.G. WEBSTER

INSTRUCTED BY: Jacques Classen Inc Attorneys

DATE OF JUDGMENT: 14 May 2026